THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 25075 of 2000

O r d e r:

The petitioner joined the services of the respondents-APSRTC as Driver in 1988. While working as such, on 23.05.1993, the bus driven by him on the route Patancheru-Kesaram met with an accident, in which a 14-year-old boy sustained grievous injury to his left leg, resulting in its amputation. A case of rash and negligent driving was registered against the petitioner. A departmental enquiry was initiated against the petitioner. The charges of rash and negligent driving and driving of the vehicle with lack of anticipation, having been proved in the enquiry, he was removed from service by order dated 19.10.1993 of respondent No.3. Assailing the said order of removal, he preferred an appeal before respondent No.2, who vide his order dated 23.03.1994 allowed the same, set aside the order of removal and ordered his reinstatement into service fixing his salary at the minimum scale.

While so, the criminal case in C.C. No. 456 of 1993 on the file of the Principal Munsif Magistrate, Sangareddy, by judgment dated 07.04.1997 ended in acquittal. Pursuant to his acquittal by the criminal Court in the criminal case, the petitioner having regard to para 15 of the Circular No. PD-43/86, dated 16.04.1986, issued by the respondents prescribing the procedure for suspension and enquiry in accident cases by the Unit Officers, preferred revision petition before respondent No.1 contending that in view of his acquittal by the criminal Court in the criminal case, the order of reinstatement into service ordered by the appellate authority should be treated one with continuity of service and backwages. However, respondent No.1 by order dated 16.04.1999 rejected the revision. It is that order, which the petitioner seeks to call in question in this writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner contends that since the petitioner was acquitted by the criminal Court in the criminal case on merits and not on technicalities, having regard to the Circular No. PD-43/86, dated 16.04.1986, issued by the respondents which prescribes the procedure for suspension and enquiry in accident cases by the Unit Officers, the petitioner is entitled to be reinstated into service with continuity of service and backwages, and inasmuch as the petitioner even before his acquittal by the criminal Court in the criminal case was reinstated into service without continuity of service and backwages, he preferred revision petition before respondent No.1 praying to treat the order of reinstatement into service passed by the appellate authority one with continuity of service and

backwages, but the same by reason of the impugned order was rejected, which is illegal and arbitrary. He submitted that once the Driver is acquitted by the criminal Court in the criminal case of the offence alleged against him, in the absence of any other misconduct, no disciplinary action can be proceeded against the Driver, and in support of this argument, he placed reliance on the judgment of the Division Bench of this Court in **S.K. Ramju v. Regional Manager, APSRTC, Nalgonda**. In reply to the contention of the respondents that inasmuch as the petitioner had not raised the plea of benefit of the circular in the revision petition, he is not entitled to raise the said plea in the writ petition, the learned counsel for the petitioner submitted that a new plea, which raises a pure question of law, can be raised at any point of time, even though it was not pleaded at the initial stage, and in support of this submission, he placed reliance on the judgment of the apex Court in **Kunal Singh v. Union of India.**

The respondents-APSRTC filed detailed counter. The learned Standing Counsel for the respondents-APSRTC contended that the petitioner has unconditionally accepted the order of reinstatement. The petitioner is not entitled to the benefit of para 15 of the Circular No. PD-43/86, dated 16.04.1986, issued by the respondents, which prescribed the procedure for suspension and enquiry in accident cases by the Unit Officers, and more so when he had not pleaded for the benefit of this circular in the revision petition. Further as per the guidelines given in the circular, those who are not in employment as on the date of acquittal, are alone entitled to the benefit thereof, and since the order of removal passed against the petitioner was not in subsistence as on the date of his acquittal, for the said order having been set aside in appeal, the petitioner rejoined the service of the respondents, he is not entitled to the benefit thereof. He submitted that as the petitioner was already reinstated into service vide orders of respondent No.2, even before his acquittal by the criminal Court, he is required to file review petition before respondent No.2, which had ordered his reinstatement, but the petitioner in stead of preferring review before respondent No.2, has filed revision petition before respondent No.1, who has no jurisdiction. He submitted that the judgment of the criminal court is not binding on the disciplinary authority, which exercised power under the APSRTC Employees' (CC & A) Regulations, 1967. He submitted that the revision petition has to be filed within six months from the date of acquittal, but the petitioner has preferred the revision petition beyond six months, and as such, the same is barred by limitation. He thus submitted that no interference is called for with the impugned order, and prayed that the writ petition be dismissed.

In the light of the arguments advanced, the only question that arises for consideration in this writ petition is whether the petitioner who was found guilty in the departmental enquiry and was removed from service and later reinstated into service by order of the appellate authority, much before his acquittal by the criminal court, is entitled to continuity of service and backwages as per para 15 of the Circular No. PD-43/86, dated 16.04.1986.?

Admittedly, in respect of the accident that occurred on 23.05.1993, a criminal

case was registered against the petitioner and simultaneously a departmental enquiry was also conducted. In the departmental enquiry, the petitioner was found guilty of the charges leveled against him. Based on the enquiry report, the disciplinary authority removed him from service vide order dated 19.10.1993. However, in the appeal preferred thereagainst, the appellate authority, vide order dated 23.03.1994, directed reinstatement of the petitioner into service fixing his salary at the minimum scale. Nearly three years after his reinstatement into service, the Principal Munsif Magistrate, vide judgment dated 07.04.1997, passed in C.C. No. 456 of 1993, acquitted the petitioner from the criminal case.

The petitioner contends that though he has been reinstated into service, in view of his acquittal by the criminal court in the criminal case, having regard to para 15 of the Circular No. PD-43/86, dated 16.04.1986 of the respondents, he is entitled to continuity of service and backwages, and the action of the respondents in rejecting his request for continuity of service and backwages, is illegal and arbitrary.

To consider this question, a reference to para 15 of the circular would be appropriate, and it reads thus:

> If the driver is found guilty in the Departmental Enquiry and consequently removed from service and in the event of his acquittal in the court, he will not be reinstated automatically. If the driver submits an appeal along with a copy of the judgment to the competent appellate/review authority which has disposed off the previous appeal will review the case in the light of the judgment. If the acquittal is on technical grounds like witnesses not forthcoming or turning hostile or benefit of doubt is given to the accused or where evidence given is contradictory during the course of the trial etc., no reinstatement shall be considered by the appellate/review authority. In the event of reinstatement the driver shall be paid bacwkages.
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> The appeal shall be submitted by the driver within one month from the date of pronouncement of the judgment along with a copy of the judgment or a certified copy of the judgment.

A plain reading of the para 15, would make it clear that in the event of the driver, who has been found guilty in the departmental enquiry and removed from service, is subsequently acquitted by a criminal court, he is not automatically entitled for reinstatement. To avail the benefit of reinstatement upon acquittal, the driver should submit an appeal/review along with copy of the judgment to the appellate/review authority which had disposed of his appeal/review previously, within a period of one month from the date of pronouncement of judgment, and the appellate/review authority, shall review its order in the light of the judgment, and if the acquittal is on technical grounds like the witnesses not forthcoming or turning hostile or benefit of doubt is given etc., then no reinstatement shall be granted, but if reinstatement is granted, then the driver shall be paid wages.

To avail the benefit of para 15, the Driver, who has been found guilty in the departmental proceedings and removed from service, as on the date of his acquittal by the criminal court, should not be in service, in that he not have been reinstated into service in appeal or revision. The petitioner, who was found guilty in the departmental enquiry, admittedly, was removed from service, and later, he was reinstated into service by order dated 23.04.1994 of the appellate authority, and as on 07.04.1997, when the criminal court acquitted him in the criminal case, he was in

service of the respondents. Since the petitioner was in service as on the date of his acquittal by the criminal court in the criminal case, he having been reinstated into service by order of the appellate authority, he is not entitled to the benefit of para 15 of the circular, which is meant only for those drivers who having been found guilty in the departmental proceedings, were removed from service and not reinstated later in appeal or revision by the appellate/review authority.

Even though the respondents contend that the petitioner did not prefer the review to the appellate authority, who had ordered his reinstatement into service, and had preferred the review to the wrong authority, and at any rate, not brought the legal position to the notice of the authority which passed the present order, and as such, the petitioner is not entitled to seek the benefit of para 15 of the circular, the fact remains, even if the petitioner had preferred the review to the appellate authority, which had ordered his reinstatement, yet the reviewing authority could not have extended the benefit of para 15 to the petitioner, having to para 16 of the circular, which bars the driver who is found guilty in the departmental enquiry, but awarded punishment lesser than removal/dismissal, to seek redressal in the light of court judgment even if he is acquitted. Para 16 reads, which bars the petitioner to seek redressal in the light of the court judgment when he is acquitted by the court, reads thus:

> The driver who is found guilty in the departmental enquiry, but awarded punishment lesser than removal/dismissal will not have option to seek redressal in the light of Court judgment then he is acquitted in the Court.

Admittedly, the petitioner having been found guilty in the departmental enquiry, was removed from service by the disciplinary authority, and in the appeal preferred thereagainst, the appellate authority set aside the order of removal and awarded punishment lesser than removal by directing the respondents to reinstate the petitioner into service by fixing his salary at the minimum scale. Three years after his reinstatement into service by virtue of the orders of the appellate authority, the petitioner was acquitted in the criminal case by the criminal Court. Inasmuch as the petitioner who was found guilty in the departmental enquiry and removed from service by the disciplinary authority, was even before his acquittal by the criminal court in the criminal case, was awarded lesser punishment than removal by the appellate authority, which directed his reinstatement into service by fixing his salary at the minimum, the petitioner having regard to para 16 of the circular, is precluded from availing the option of redressal of his case for the benefit of continuity of service and payment of backwages in the light of the judgment of the Court, which acquitted him in the criminal case. In that view of the matter, reliance placed by the learned counsel for the petitioner on the judgments of this Court and the apex Court, referred to supra, do not come to his rescue. Therefore, no exception can be taken to the action of the respondents in rejecting the request of the petitioner for continuity of service and payment of backwages on his acquittal by the criminal court in the criminal case.

The standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different, in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative (See **Cholan Roadways Ltd. v. G. Thirugnanasambandam**). In the instant case, though the petitioner was acquitted by the criminal court in the criminal case, the fact remains, in the departmental enquiry, he was found guilty of the charges leveled against him. Therefore, his mere acquittal by the criminal court in the criminal case, does not automatically give the employee a right to be reinstated, and in the instant case, the petitioner having been reinstated into service, prior to his acquittal in the criminal case, cannot seek the benefit of backwages etc., and more so when the approach and objectives of the disciplinary proceedings and criminal proceedings are altogether distinct and different.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 9th March, 2006.

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